

Officiating on a Busman's Holiday

By Donald C. Collins

High school officials are accustomed to being paid as independent contractors and receiving a full game fee with no payroll tax withholdings. Officiating is treated as a business — separate from our regular job.

Occasionally, officials who are teachers, for example, work games in their own school districts. They are generally considered independent contractors and are paid through some other means separate from the district's payroll office. The people who cut the official's check usually don't know that the official works for the district.

Officials can be surprised when they discover that the officiating pay has been added to their regular

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paycheck with payroll taxes withheld. The school district has, in effect, treated the official as an employee who is taking a "busman's holiday," a phrase that connotes that a person who is not on his normal work assignment is doing work remarkably similar to that regular assignment.

School districts don't generally tell their employees how they will be treated when working as an official. The official is told nothing until he notices his officiating pay incorporated into his regular paycheck.

Officials treated as employees can make some special requests. Officials should note, though, that their employers could push back.

First, the official could ask for the greater of the officiating fee or the overtime rate. The district could bar

the official from officiating in his or her district either because the district must approve overtime or because it may violate district regulations.

Second, the official may ask for employment benefits while officiating. Such benefits include workers' compensation when injured, access to the district's legal counsel and insurance protection when sued. Technically, most districts don't have to defend their employees, but they commonly do since the district could be vicariously liable for its employee's negligent acts.

The official may find that the district will push back should the official assert his or her employment benefits. It is also possible that an official determines that he or she does not need to be treated as an employee, as officials should purchase their own liability insurance.

The matter may ultimately be determined by the official's net officiating income. If an official's expenses offset much of his or her officiating income, the official may benefit from being paid as an independent contractor. If not, then employee treatment would be more beneficial. There is also a small minority of officials who want to be paid as an independent contractor so they can ensure that their income is never reported to the IRS. Those officials don't want payroll taxes withheld because they have no plans to report their income. Those officials are committing tax fraud.

Fortunately, the complexities of a busman's holiday are limited because even officials who are impacted don't make enough money or do enough games in a single district to make it a large-scale problem.

Donald C. Collins is executive director of the San Francisco section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This material is for informational purposes only and is not legal advice. □

Follow Tax Rules to Avoid IRS Penalty Box

At tax time, employees of a league or assigner will receive a W-2, which shows the amount withheld from an official's earnings.

Most officials are independent contractors and will receive a 1099 form. That means that the official is responsible for paying all of his or her own taxes. Some may receive both a W-2 and 1099.

Every year, many officials add up all of their expenses and find they have a loss. If that is the case, the IRS could conclude that officiating is not a business but a hobby. The best way to avoid that is to show a profit (a positive net income) and operate in a "business-like" manner. That involves recording all business activities, and retaining receipts of expenses: Strive to keep good records if you plan on deducting your expenses. If officials don't record revenues and expenses, they will lose control of the taxes they have to pay.

Disabilities Act Protects to Subjective Standard

Associations have had disputes with individuals who want to officiate, but don't get many, or any, assignments. When the reason for the dispute involves a physical limitation, federal law may come into play.

The Americans with Disabilities Act essentially prohibits employers from making any personnel decisions that are based on a disability, if that disability can be reasonably accommodated.

A disabled person is generally defined as one who has a physical or mental impairment that substantially limits one or more of his or her major life activities. According to case law, it's the point at which the limitation is greater than that of an "unimpaired" person.

Even if a person can show that he or she is disabled, the person has to show that he or she can adequately do the job with "reasonable accommodation." The term "reasonable accommodation" is difficult to define, and it has led to extensive litigation.

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